

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DAMEION EDWARD ROBINSON,

2:16-CV-00312-TC

Plaintiff,

ORDER

v.

JAMES TAYLOR, et al.,

Defendants.

BROWN, Judge.

Magistrate Judge Thomas M. Coffin issued Findings and Recommendation (#27) on December 27, 2016, in which he recommended the Court grant Defendants' Motion (#16) for Summary Judgment and dismiss this matter with prejudice on the grounds that Plaintiff failed to exhaust his administrative remedies and Plaintiff's state-law claim is barred by Eleventh Amendment immunity.

Because no objections to the Magistrate Judge's Findings and Recommendation were filed, this Court is relieved of its obligation to review the record *de novo*. See *Dawson v. Marshall*,

561 F.3d 930, 932 (9th Cir. 2009). *See also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*).

Having reviewed the legal principles *de novo*, the Court modifies the Findings and Recommendation as follows:

As noted, the Magistrate Judge recommends the Court dismiss this matter with prejudice on the grounds that Plaintiff failed to exhaust his administrative remedies and Plaintiff's state-law claim is barred by Eleventh Amendment immunity. The Ninth Circuit, however, has held dismissals for failure to exhaust administrative remedies should be without prejudice. *See, e.g., Terrell v. Brewer*, 935 F.2d 1015, 1019 (9th Cir. 1991)("Dismissal for failure to exhaust administrative remedies is not . . . jurisdictional[, therefore,] . . . [t]he proper remedy is dismissal without prejudice."); *Armstrong v. Scribner*, 350 F. App'x 186, 186 (9th Cir. 2009)("The district court properly determined that Armstrong failed to exhaust administrative remedies as to his claim concerning access to a computer However, we vacate the judgment with respect to this claim and remand for dismissal without prejudice.").

The Ninth Circuit has also held dismissals on the ground of Eleventh Amendment immunity should be without prejudice. *See, e.g., Genevier v. United States Citizenship and Immigration Svcs*, 144 F. App'x 586, 587 (9th Cir. 2005)("The district court properly dismissed Genevier's claims against CDSS because, as an

arm of the state, it is entitled to Eleventh Amendment immunity.

. . . The claims against CDSS should have been dismissed without prejudice, however.").

Accordingly, the Court dismisses this matter without prejudice.

CONCLUSION

The Court **ADOPTS as modified** Magistrate Judge Coffin's Findings and Recommendation (#27). Accordingly, the Court **DISMISSES** this matter **without prejudice**.

IT IS SO ORDERED.

DATED this 6th day of February, 2017.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge